NAVI & MAP SDN BHD A

v.

TWINICE SDN BHD & ORS

HIGH COURT MALAYA, KUALA LUMPUR B
AZAHAR MOHAMED J
[SUIT NO: D2-22-1530-2006]
2 NOVEMBER 2010

COPYRIGHT: *Infringement - Ownership of copyright - Copyright over* C
set of compiled and published map - Actual makers indefinite - Whether ownership proven - Reliance on statutory declaration to establish copyright pursuant to s. 42 Copyright Act 1987 - Whether statutory declaration prima facie proof of copyright

EVIDENCE: *Witnesses - Conflicting testimony - Contradiction on* D
material points - Whether testimonies from plaintiff's witnesses corroborated factually - Whether plaintiff's testimonies credible

EVIDENCE*: Documentary evidence - Admissibility of - Computer* E
printout of Skype chat - Document not produced wholly as portions of Skype chat missing - Whether printout admissible pursuant to s. 90A Evidence Act 1950

LABOUR LAW: *Employment - Resignation - Fifth defendant employee* F
claiming constructive dismissal - Whether 5th defendant constructively dismissed - Whether 5th defendant successful in her claim despite her voluntary resignation

The plaintiff claimed copyright over a set of compiled and G
published map data both in print and digital format entitled the 5th Edition, Street Directory of Kuala Lumpur and Klang Valley ('the Works'). It claimed that the defendants without its consent and authority had substantially reproduced, manufactured and/sold the map data and the related digital maps to the public particularly the 7th defendant, Navteq North America LLC. The 7th H
defendant was not named in that suit. The plaintiff obtained an *ex parte* Anton Pillar orders against the 1st to 6th defendant where the plaintiff confiscated copies of all documents, image digital maps and computer copy files in computers, laptop computers, a server and screen shots of a File Transfer Protocol server from the 1st I

defendant's premises. The 7th defendant, who was not named in the present suit, voluntarily subjected itself to intervene in this suit and counter claimed for injunctive relief, declaratory order, damages and costs against the plaintiff for copyright infringement of its copyright protected works seized from the 1st defendant's premises. The 5th defendant herein also counterclaimed against the plaintiff for constructively dismissing her.

The plaintiff in claiming as the owner of the Works, relied on the following in its claim for infringement of the copyright: (i) Schedule 1 was the statutory declaration ('SD') sworn by the plaintiff's former director and chief operating officer, Mr Owatari Hideo ('PW5') pursuant to s. 42 of the Copyright Act 1987 ('the Act'); (ii) Schedule 2 was a list of conversion employees listing their names, jobs done, dates of completion and commencement for the creation of the Works; and (iii) Schedule 3 contained names, National Registration Identity Card numbers, job responsibilities for map number and map reference, date of commencement and completion.

Held (dismissing plaintiff's application against all defendants with costs; dismissing 5th defendant's counter claim against plaintiff with costs; and allowing 7th defendant's counter claim against plaintiff with costs):

(1) The plaintiff failed in its copyright infringement claim as there was no *prima facie* evidence to show that the plaintiff was the copyright owner of the work. In the SD, PW5 said that the maps and traps were completed by certain personnel. However, the plaintiff failed to exhibit the actual work carried out by these personnel and, thus, the SD was defective and did not comply with s. 42(1)(a) of the Act. (para 3)

(2) The testimonies from the plaintiff's witnesses, PW1 and PW3 concerning the tracing paper were regarded as unreliable. PW1 in his testimony claimed that there was a tracing paper of the plaintiff's key map overlaid on the 1st defendant's key map. The visual examination of the exh. P5 rendered by PW1 showed an overview map of Kuala Lumpur and Klang Valley bearing the 7th defendant's endorsement. That map was supplied to the 1st defendant for certain jobs under the work for hire agreement signed between the 1st and 7th defendant

and, thus, there was no tracing paper of the plaintiff's map as alleged by PW1. PW3's testimony that the plaintiff's map on the tracing paper matched the defendant's map did not carry much weight as he had admitted in cross examination that his role was merely to judge the technique used. PW3 could not verify the maps in comparison with each other due to the fact that the comparisons were not prepared by him. As such, there was no match between the plaintiff's key map and the map supplied by the 7th defendant to the 1st defendant. The 1st defendant's maps of Penang and Johor Bahru were disregarded for the fact that the Works only comprised maps of Kuala Lumpur and Klang Valley. (paras 8-10 & 12)

(3) The plaintiff argued that the skype chat between the defendant witnesses was an evidence of copyright infringement. The plaintiff produced a certificate ('exh. P29') pursuant to s. 90A Evidence Act 1950 for admission of the printout of that chat duly signed by a digital forensic expert head from the Digital Forensic Department in Cyber Security ('PW4'). However, exh. P29 was not a valid certificate under s. 90A due to the fact that it certified that PW4 was not the officer responsible for the management and analysis process of the computer that produced the skype chats. Furthermore, the certificate did not certify that the document was produced in the course of its ordinary use or that it was in good working order. It was also evidenced that portions of the skype chat were missing. Due to the abovementioned reasons, the evidence of the skype chat did not aid the plaintiff in proving copyright infringement. In conclusion, the plaintiff failed to prove on a balance of probability that the defendants had infringed the copyright contained in the works as set out in sch. 1, 2 and 3. (paras 13-15)

(4) The Works no longer possessed the necessary quality of confidence as the Works were already in the public domain for a price at the material time. By entering the public domain, it had destroyed the usefulness of its secrecy and destroyed any usefulness in enforcing the original confidential obligation. Furthermore, in relation to sch. 2 & 3, the plaintiff failed to prove its commercial value to anyone or the reason for the information to be confidential. Due to this issue, the plaintiff

failed to satisfy the burden of proof that sch. 1, 2 and 3 contained confidential information. The plaintiff also failed to prove its other cause of action *ie*, for conspiracy to injure, breach of duty of good faith and fidelity, conspiracy, and tort of unlawful interference with trade. (paras 17-21)

(5) The SD tendered by the 7th defendant in support of its copyright ownership over the works had complied with all the requirements under s. 42 of the Act whereas the plaintiff failed to adduce any evidence to rebut the presumption of *prima facie* ownership. Such prima evidence must therefore be regarded as having crystallized into conclusive evidence of the 7th defendant's copyright ownership of the Works in question. (para 25)

(6) The 5th defendant's counter claim for constructive dismissal was based on her claim that the plaintiff showed an intention to repudiate her contract of employment by reducing her job scope and responsibility without any just reason or cause. However, there was a delay in the 5th defendant's action as she continued in her employment sometime after the plaintiff's conduct and as such, she lost her right to treat herself as discharged when she resigned from her employment with the plaintiff. There was no merit to the 5th defendant's allegation for constructive dismissal which came in only after the plaintiff filed this suit. (para 23)

Case(s) referred to:

Lock International Plc v. Beswick And Others [1989] 3 All ER 373 ***(refd)***

Microsoft Corporation v. Yong Wai Hong [2008] 6 CLJ 223 CA ***(refd)***

Saltman Engineering Co Ltd v. Campbell Engineering Co Ltd [1948] 65 RPC 203 ***(refd)***

Ultra Dimension Sdn Bhd v. Ketua Pengarah, Lembaga Penggalakan Pelancongan Malaysia & Ors [2010] 8 CLJ 245 HC ***(refd)***

Western Excavation (ECC) Ltd v. Sharp [1978] IRLR 27 ***(refd)***

Legislation referred to:

Copyright Act 1987, s. 42(1)(a)(iii)

Evidence Act 1950, s. 90A

Other source(s) referred to:

Robert Dean, *Law of Trade Secrets and Personal Secrets*, 2nd edn, pp 80, 190

For the plaintiff - Shane Chang; M/s Jeff Leong, Poon & Wong
For the 1st, 2nd, 3rd, 5th & 6th defendants - Gary Teh (Roy Joseph with him); M/s Roy Joseph Loh & Gary Teh
For the 4th defendant - Rita lype; M/s Zainal Abidin & Co
For the 7th defendant - SF Wong (Gary Lim & Michelle Loi with him); M/s Shearn Delamore & Co

Reported by Melanie Murthy

JUDGMENT

Azahar Mohamed J:

[1] Navi & Map Sdn Bhd (the plaintiff) in this suit for the most part seeks to protect a set of compiled and published map data both in print and digital format. Broadly speaking, applying the Geographic Information System, this map data is collected using Geographical Positioning Systems ("GPS") to survey roads together with traditional human surveying and collection methods marking down by hand, points of interest such as hotels, bus stops etc, and other information on to plot maps which together with other plot maps form a larger map. This larger map is the base map which is updated from time to time. These plot maps are converted into digitized data which are stored in a computer. These digital maps are then converted into print format maps with artwork and cartography, finally resulting in a street directory for publication.

[2] The work over which the plaintiff claims copyright is entitled the 5th edn, Street Directory of Kuala Lumpur and Klang Valley (the works). The plaintiff claims that the defendants without the plaintiff's consent and authority, acquired and substantially reproduced, manufactured and/or sold the map data and the related digital maps to the public, in particular to Navteq North America LLC (the 7th defendant). Initially, the 7th defendant, the alleged recipient of the infringing material was not named a defendant in the present suit. Here one point should be noted. The plaintiff obtained *ex parte* Anton Pillar orders against the original 1st to 6th defendants on 31 October 2006 and executed the order on 8, 9, 10, 13 November 2006. As a result, the plaintiff obtained copies of all documents, image digital maps and

computer copy files in computers, lap top computers, a server and screen shots of a file transfer protocol server at the 1st defendant's premises. On 2 July 2007, the 7th defendant voluntarily subjected itself to the jurisdiction of this court by applying to intervene into this suit.

Findings Of Court On Alleged Copyright Infringement

[3] I will deal first with the case of alleged copyright infringement. First and foremost, there is substance in the arguments of learned counsel for the defendants to the effect that there is no *prima facie* evidence to show that the plaintiff is the copyright owner of the works. The pleaded case of the plaintiff is that it is the owner of the copyright of the works in question. To establish the same, the plaintiff relies on the statutory declaration sworn by PW5 made pursuant to s. 42 of the Copyright Act 1987 (the Act). Section 42's statutory declaration is a mode of proving ownership of copyright. As a statutory aid, it provides a means of proving ownership of the copyright in a work. Failure to fully comply with the prerequisite of s. 42 renders the statutory declaration to be defective and invalid (see: *Ultra Dimension Sdn Bhd v. Ketua Pengarah, Lembaga Penggalakan Pelancongan Malaysia & Ors* [2010] 8 CLJ 245). In the amended statement of claim, the plaintiff avers that: it is the owner of the copyright in the artistic works in print format and maps in digital format of which the plaintiff alleges it is the owner as regards the copyright in the published items and soft copies as identified in sch. 1. Schedule 1 is the statutory declaration sworn by Mr Owatari Hideo (PW5), the former director and chief operating officer of the plaintiff, which exhibits a copy of the street directory as appendix 1. PW5 said that the maps and traps were completed by the persons named in the "collection personnel for the 5th edn" which appears as appendix 2 and in the "conversion personnel for the 5th edn" which appears as appendix 3. However, most important of all, the plaintiff failed to exhibit the actual work carried out by these personnel. In this way, appendix 2 and 3 are not a "true copy of the work ..." as required under s. 42(1)(a) (iii) of the Act. For this reason, the statutory declaration is defective and does not comply with the said section. No reliance can be placed on the on the statutory provision. The effect is that there is no *prima facie* evidence of the fact of the plaintiff's ownership over the works in question. On that basis alone, the plaintiff failed in its copyright infringement claim.

[4] On the assumption that the plaintiff is the copyright owner of the works, I move on now to deal with the question whether the defendants have infringed the copyright contained in works as set out in sch. 1, 2 and 3.

[5] Learned counsel for the plaintiff argued the hash value analysis provided by the Cyber Security Malaysia experts is the strongest possible evidence to show that there were clear infringements of the plaintiff's copyright. I do not think it is right to resolve the issue by so simple a method. In this regard, PW2 admitted that he did not compare the content of the files but only the hash values and did not adduce any evidence as to the content of the files with identical hash values found primarily in the external hard disk drive brought to Cyber Security by PW6, the 5th defendant's external hard disk drive, the 5th defendant's notebook and the plaintiff's servers although it has had ample opportunity to do so since it filed this suit in 2006. The court cannot assume that the identical hash number files have anything to do with the works in question without any evidence being adduced. It is trite law that he who asserts must prove. Hence, the burden of proof lies squarely on the plaintiff to prove that these files were identical in content to the works in which the plaintiff is asserting its copyright.

[6] Next, learned counsel for the plaintiff argued that PW1 in his testimony said that he had overlaid the maps obtained from the 1st defendant's premises with the plaintiff's maps and had found substantial similarities between them. Learned counsel also relied on the evidence of PW3 to show evidence of infringement.

[7] However PW1's evidence in this regard is far from satisfactory. During cross examination, PW1 was taken through the comparisons he made in P4. He was asked to indicate where such matches in strokes were and if the coverage of the plaintiff's and defendant's maps were the same. However, the answers he gave suggested that they did not match. Even with the documents before him PW1 could not show similarities or matches in strokes between the plaintiff's and defendant's map. PW1 during cross examination said that there was some original write up indicating the "similarities" but he did produce the write up although asked. PW1 admitted that there was no thorough check up of the materials seized from the Anton Pillar raid. He also admitted that he did not have time to "properly check" the materials.

[8] PW1 in his witness statement (P1) also referred to p. 1879 part C Jilid 6, the Base/Key Map, which was marked as exh. P5. PW1 alleged in P1 that exh. P5 consists of a tracing paper of the plaintiff's key map overlaid on the 1st defendant's key map. PW1 allegation is that exh. P5 shows the defendant's map matched the plaintiff's map. PW3 in his witness statement marked P12 said that by looking at the plaintiff's printed map on a tracing paper and overlaying it on the defendant's printed map, one can gather the defendant's map matched with the plaintiff's map.

[9] However, in my view, the testimonies of both PW1 and PW3 in this regard are unreliable for the following reasons. A visual examination of exh. P5 reveals that it is only one piece of large paper appearing on the face of it to be the 7th defendant's map of an over view of Kuala Lumpur and Klang Valley. There is no tracing paper of the plaintiff's map as alleged by PW1. The only possible conclusion that can possibly be made is that there is no match between the plaintiff's key map and the map supplied by the 7th defendant to the 1st defendant.

[10] In actual fact, a visual examination shows that exh. P5 is an over view map of Kuala Lumpur bearing the endorsement "© Copyright NAVTEQ 2006." DW4 in his evidence testified that P5 is actually a key map provided by the 7th defendant given to the 1st defendant for the Q3 and Q4 job under the work for hire agreement dated 29 August 2006. DW4's evidence is corroborated by DW2's testimony where an email from Navteq confirmed that the 7th defendant supplied map to the 1st defendant for the work for hire agreement. DW2 has identified P5 as the base map supplied by the 7th defendant from world express mapping. This same exh. P5 was also produced in DW1's statutory declaration affirmed on 4 May 2010 pursuant to s. 42 of the Act and marked as D31.

[11] At this point, it is appropriate to deal with the issue of the Road Closure At Smart Tunnel Construction Site. In this regard PW1 at Q&A 12 of P1 referred to p. 1881 part C Jilid 6 marked as exh. P7. P7 is allegedly the defendant's map of an area in Kuala Lumpur overlaid and compared to the plaintiff's GPS log. Although p. 1881 was marked as an exh. P7, in my view, P7 is admissible only in relation to the fact that the P7 comparison and overlaying was prepared by PW1 and not to the authenticity or

accurateness of information supplied by 3rd parties to PW1 such as the plaintiff's GPS logs or allegation that the road indicated in P7 having been closed in 2006. The veracity of the contents of P7 being the plaintiff's GPS logs and allegation that the road therein are closed still need to be considered. PW1 alleges that the plaintiff's GPS data was collected in 2003 in red shows the existence of a road (circled in yellow). This evidence is without any documentary support and should be given very little weight. The plaintiff did not exist in 2003. PW1 worked in RISE in 1994 to 1998 and not in 2003. The GPS logs if anything were collected by personnel in RISE not the plaintiff. PW1 did not collect the said GPS logs in the year 2003 and he has no personal knowledge of the same. It is therefore purely hearsay. PW1 then alleged that the road circled in yellow was closed in 2006 due to SMART Tunnel construction and the defendant could not therefore have collected GPS logs for that road in 2006. Therefore PW1 and PW3 allege the defendants maps are the plaintiffs. PW1 admitted that he was never at the site of the map to verify the road was closed or its name. PW1 said that his field verification team were at the site to verify this but these personnel were not called as witnesses. PW1 had no personal knowledge and again it is purely hearsay. When PW1 was challenged on this, the plaintiff could have produced the alleged personnel who had verified that the road in question was closed and what road it was. The plaintiff did not. DW4 on the other hand, testified that the road in question was Jalan Sungai Besi near TUDM and was open. DW4 adduced evidence that there were GPS logs showing the 1st defendant's staff drove and captured GPS logs of that Sungai Besi road on 24 July 2006.

[12] It is also my view that PW3's evidence of matching does not carry much weight. PW3 admitted in cross examination his role was merely to judge the technique used. PW3 never even prepared the comparisons himself and cannot even verify if the data/maps used for comparison are the plaintiff's and/or the defendants and not others. PW3 confirmed that the method used by the plaintiff for comparison was not suggested by him. On the contrary, in 2007 after the Anton Pillar PW3 had asked that the plaintiff's GPS log be compared with the defendant's GPS log but was told that the plaintiff was unable to obtain it.

[13] At this juncture I will deal very briefly with the Skype chat tendered as exh. P16 which learned counsel for the plaintiff argued is evidence of copyright infringement. A certificate (exh. P29) was produced pursuant to s. 90A of the Evidence Act 1950 to admit the printout of Skype chat between DW2 and DW4 at pp. 741-877 of C3. The certificate was signed by PW4, the digital forensic expert head from the Digital Forensic Department in Cyber Security stating:

> Dokumen yang berikut telah dikeluarkan oleh computer di pejabat saya semasa di ... (NISER) ... dan bahawa dokumen yang berikut telah dikeluarkan daripada cakera keras Fujitsu MHT 2080AHPL menurut laporan preliminary NISER ...
>
> Saya juga memperakui dan dengan ini mengesahkan bahawa saya adalah pegawai yang bertanggungjawab untuk pengurusan dan proses penganalisaan cakera keras yang telah mengeluarkan dokumen yang telah disenaraikan di atas

Section 90A of the Evidence Act allows a document produced by computer to be admitted where the maker is not called if a certificate by a person who either before or after the production of the document by the computer is responsible for the management of the operation of that computer or for the conduct of the activities for which that computer was used. In my view, there is merit in the argument of learned counsel for the defendants to the effect that exh. P29 is not valid a certificate pursuant to s. 90A of the Evidence Act 1950 to admit the printout of Skype chat. Exhibit P29 certifies that PW4 that he was the officer responsible for the management and analysis process of the hard disc known as Fujitsu MHT 2080 AH PL and not the computer that produced the said Skype chats. The certificate also did not certify that the document was produced in the course of its ordinary use or that it was in good working order.

[14] Furthermore, it is in evidence that portions of the Skype chat are missing. For all these reasons, evidence relating to the Skype chat does not help the plaintiff case in proving copyright infringement.

[15] In his written submissions, learned counsel for the plaintiff also referred to the 1st defendant's maps of Penang and Johor Bahru. In my view the alleged infringement of the maps of Penang and Johor Bahru should be disregarded as the works in question only comprises maps of Kuala Lumpur and the Klang Valley.

[16] Hence, for all the reasons stated earlier, in my judgment the plaintiff has failed to prove on a balance of probability that the defendants have infringed the copyright contained in works as set out in sch. 1, 2 and 3.

Findings Of Court On Alleged Breach Of Confidential Information

[17] I now turn to the claim based on breach of confidential information. The plaintiff at para. 18 of the statement of claim pleads that the works as set out in sch. 1, 2 and 3 is the confidential information. In this regard, it is necessary to keep in mind that the plaintiff also pleaded at para. 12(viii)(g) of the statement of claim that the works (schedule 1) was published for sale by the plaintiff in April 2006. That being so, the works were already in the public domain at the material time. Hence, in my view, the works no longer possess the necessary quality of confidence once it has been published. Once the information enters the public domain and has received sufficient publicity, it effectively destroys the usefulness of its secrecy and destroys any usefulness in enforcing the original confidential obligation (see: p. 80, the *Law of Trade Secrets and Personal Secrets* by Robert Dean, 2nd edn and *Saltman Engineering Co Ltd v. Campbell Engineering Co Ltd* [1948] 65 RPC 203). In the present case, the work has been disclosed for sale to everyone in Malaysia for a price; it is not possible for it to retain any confidentiality after publication.

[18] Now, sch. 2 is a list of conversion employees listing their names, jobs done, dates of completion and commencement for the job for the creation of the work. There is merit in the argument of counsel for the defendants to the effect that this information is trivial in nature with no commercial value to anyone and does not possess the necessary quality of confidence. The plaintiff led no evidence to explain why it is confidential (p. 190, the *Law of Trade Secrets and Personal Secrets* by Robert Dean, 2nd edn and *Lock International plc v. Beswick And Others* [1989] 3 All ER 373).

[19] Schedule 3 is titled "personnel working on copyright trap". It contains names, NRIC nos, designations, job responsibilities for map No and map ref, date of commencement and completion. The plaintiff has also led no evidence to prove how and why this document in sch. 3 is confidential and how it is to be of commercial value to anyone.

[20] On this issue, I conclude by saying that the plaintiff has failed satisfy the burden of proof in fact and in law that sch. 1 and/or sch. 2 and/or sch. 3 is in fact confidential information.

Findings Of Court On The Plaintiff's Other Cause Of Action

[21] I also conclude that the plaintiff has failed to prove any merit regarding its other cause of action, that is to say, for conspiracy to injure, breach of duty of good faith and fidelity, conspiracy, and tort of unlawful interference with trade.

[22] I do not feel that further elaboration is necessary considering the fact that in his written and oral submission, I note that learned counsel for the plaintiff in the main argued only on matters relating to copyright infringement and breach of confidential confidence.

Findings Of Court On Whether The 5th Defendant Was Constructively Dismissed

[23] I turn now to the 5th defendant's counter claim. It is the contention of the 5th defendant that between 21 April 2006 and 19 July 2006 she was constructively dismissed by the plaintiff. According to the 5th defendant, on 21 April 2006 the plaintiff without any just reason or cause reduced her job scope and responsibility. The 5th defendant's case is that the plaintiff's conduct ie, relegation and non confirmation without reasons shows an intention to repudiate her contract of employment. It is not disputed that she continued in her employment with the plaintiff for sometime after the conduct of which she complained. Although it is true the 5th defendant must not be too hasty in making the decision to walk out of the job, I think she should make up her mind and resign reasonably soon after the plaintiff's action (see: *Western Excavation (ECC) Ltd v. Sharp* [1978] IRLR 27). In the circumstances of this case, there was delay in her action. In my view she loses her right to treat herself as discharged. Further on this point, the 5th defendant made the allegation of constructive dismissal in her statement of defence dated 23 April 2007 only after the plaintiff filed this suit. For all these reasons, it is my judgment, that the allegation of constructive has no merit.

Findings Of Court Regarding The 7th Defendant's Counter Claim

[24] The first point to note is that in the plaintiff's amended writ and statement of claim there is no pleaded cause of action whether for copyright infringement or breach of confidence or any cause of action against the 7th defendant. The 7th defendant nevertheless entered its defence, taking the stand that in so far as the amendments seek to imply acts of copyright infringement or breach of confidence, such wrongful acts are denied. The 7th defendant also counter-claimed for injunctive relief, declaratory order, damages and costs as against the plaintiff for any acts of copyright infringement by the plaintiff of the 7th defendant's copyright protected works set out in the Schedule of the counter claim. It is the 7th defendant's case that the materials of the Schedule are materials extracted from the folder data seized from the premises of the 1st defendant when the plaintiff executed the Anton Pillar seizure.

[25] The 7th defendant in support of its copyright ownership claim has tendered exh. D31 through Mr Choo Kong Pang (DW1), the Director of Digital Mapping Operations, Asia Pacific of the 7th defendant, which is a statutory declaration sworn pursuant to s. 42 of the Act. The statutory declaration has complied with all the requirements of the provision The effect of that is to provide *prima facie* evidence of the fact of the 7th defendant's ownership of the copyright over the works in question (see: *Microsoft Corporation v. Yong Wai Hong* [2008] 6 CLJ 223). It is then for the plaintiff to present clear evidence to rebut the 7th defendant's *prima facie* ownership. The plaintiff has failed to adduce any evidence to rebut the presumption of *prime facie* ownership. For this reason, such *prima facie* evidence must therefore be regarded as having crystallized into conclusive evidence of the 7th defendant's copyright ownership of the works in question.

[26] In my view the 7th defendant is therefore entitled to the reliefs set out in the prayers of its counter claim except prayer 2 since DW1 has no personal knowledge of the matter and could not identify which or any part of the materials or documents that were wrongly seized during the Anton Pillar raid.

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Conclusion

[27] Therefore, to sum it up, my judgment is as follows:

(a) The whole of the plaintiff's claim against all the defendants is dismissed with costs.

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(b) The 5th defendant counter claim against the plaintiff is also dismissed with costs.

(c) The 7th defendant counter claim against the plaintiff is allowed with costs. The 7th defendant is entitled to all the reliefs except prayer 2 as set out in the counter claim.

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